

LAW & POLITICAL ECONOMY

Fall 2023

Wednesdays, 1:05 p.m. – 2:55 p.m.

Classroom 118

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Overview

At the turn of the twentieth century, a host of legal scholars developed innovative analyses of the relationship between law, democracy, and the economy. These scholars of political economy refuted laissez-faire ideas by showing that the state, with law as its instrument, necessarily constructed the rules of the marketplace. They also showed how forms of power, constraint, and coercion worked in the economy, along the way justifying governmental regulation to equalize the playing field and provide for the security of citizens. In these ways and others, scholars of political economy reshaped thinking about law, democracy, and the economy, and built an intellectual infrastructure to undergird the regulatory developments of the New Deal and Great Society. Soon, however, there was a shift: the study of economics largely supplanted political economy, and neoclassical ideas about the autonomy of the market and efficiency again took hold. In what became thought of as “private law” fields, such as contracts and antitrust, market baselines were generally accepted, and legal analysis came to be organized around issues of efficiency, marginal utility, and wealth maximization. And in what became thought of as “public law” fields, such as constitutional law, questions of economic power, insecurity, and constraint were largely sidelined.

Today, under conditions of mounting economic inequality and insecurity and concentrating corporate power, a burgeoning group of legal scholars is paying renewed attention to questions of political economy by building out a modern law-and-political-economy (LPE) framework. LPE scholars—drawing insights and inspiration from earlier political economy struggles and work, feminist theory, and critical theory—seek to enrich our understanding of law’s role in mediating the relationship between democracy and economic ordering. In doing so, they aim to reorient legal analysis away from a focus on efficiency and towards a focus on power, away from concepts of neutrality and towards a focus on equality, and away from anti-politics skeptical about government and insulative of markets and towards a richer account of democracy and its regulatory roles and functions.

Course Objectives

This seminar will offer a study of law and political economy and will focus on emerging readings from legal thinkers. It will also offer students the opportunity to contribute to the development of LPE by producing their own works of scholarship. By the end of the semester, I would like for you to:

- Understand, contextualize, and analyze the history and development of the study of law as it relates to questions of political economy;
- Understand and analyze scholarly works applying the LPE framework across a variety of legal fields;
- Formulate a paper idea and topic that is LPE-related and perform sufficient background research to develop your project;
- Demonstrate your ability to think and write critically in producing and editing an LPE-related paper; and
- Demonstrate your ability to engage with LPE scholarship by engaging with your colleagues' ideas and paper projects.

Course Materials

Readings for each session are listed below and have been posted on Blackboard under the “Course Documents” tab.

Office Hours

I will hold regular office hours, which I will announce in the beginning of the semester. I encourage you, however, to meet with me whenever you have questions or would just like to talk. You can send me an e-mail, and I'll be happy to set up a meeting with you.

Class Expectations & Attendance

Please attend class regularly and participate in discussions. Class attendance and participation will be worth 10% of your grade.

By 10 a.m. the day of each session, please post a short response to the readings to Blackboard under the “Discussions” tab. Your response can focus on some or all of the readings for the day, or even just a single aspect of one reading. Completion of the response papers will be worth another 10% of your grade.

ULWR Paper

A paper fulfilling the Upper Level Writing Requirement (ULWR) will be worth the remaining 80% of your grade. We will work together over the course of the semester to help you to develop your paper. There are several stages and deadlines for the paper:

- **Wednesday, October 4: Short Presentation**
 - Each student will give a two-minute presentation in class on one or two topic ideas. The class will then comment and share suggestions for further research.

- **Wednesday, October 18: Outline**
 - Each student will submit a detailed outline describing their paper’s claim and major components. Outlines are usually between ten and fifteen double-spaced pages.
- **Wednesday, November 8, 15 & 29: Paper presentations**
 - During the final three weeks of the semester, students will present drafts of their papers for a workshop-style discussion. Drafts will be due a week before the presentation date to give the presenter’s classmates ample time for review. A student commentator will introduce each paper, and the author will then respond. The class will then constructively discuss the paper for the remaining allotted time.
- **Wednesday, December 20: Final draft due**
 - Please email your final draft to me at lnorris@richmond.edu by 5 p.m.

Please note that the use of text-generating artificial intelligence tools (like ChatGPT) without the explicit permission of the instructor is considered an Honor Code violation.

Sessions & Research

We will generally cover the following topics & readings in order. All readings will be posted on Blackboard in a “Course Documents” folder corresponding to the week.

Please note that for some of the readings, I identify here excerpts – page ranges – to read. The readings are all posted as full articles on Blackboard, however. So please pay attention to the page numbers on this syllabus, as you may otherwise do extra reading.

Week 1 (Aug. 30): Introduction to LPE

Readings:

- Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski, & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth Century Synthesis* (entire article)
- Samuel Aber, *Neoliberalism: An LPE Reading List and Introduction* (pp. 1-8)
- Gary Gerstle, *The Rise and Fall of the Neoliberal Era: American and the World in the Free Market Era* (Excerpt, entire Introduction)
- Angela P. Harris, *Where Is Race in Law and Political Economy?* (entire [post](#))

Optional:

- Corinne Blalock, *Neoliberalism and the Crisis of Legal Theory*
- [LPE 101 video](#), Intro to Law and Political Economy I, featuring Amy Kapczynski, with commentary from Ganesh Sitaraman and K. Sabeel Rahman
- [LPE 101 video](#), Intro to Law and Political Economy II, featuring Angela P. Harris, with commentary from Ganesh Sitaraman and K. Sabeel Rahman

Week 2 (Sept. 6): Courts, procedure, and LPE

Readings:

- Luke Norris, *Neoliberal Civil Procedure* (pp. 471-506)
- Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg, & Lauren Sudeall, *Racial Capitalism in the Civil Courts* (entire article)
- Brian Highsmith & Kathleen Thelen, *The Role of Courts in American Political Economy* (entire [post](#))
- Helen Hershkoff & Luke Norris, *The Oligarchic Courthouse* (entire [post](#))

Week 3 (Sept. 13): Constitutional political economy

Readings:

- Joseph Fishkin & William E. Forbath, *The Anti-Oligarchy Constitution: Reconstructing the Economic Foundations of American Democracy* (Excerpt 1, entire Introduction; Excerpt 2, ch. 9, pp. 421-61, 477-87)
- Jedidiah Purdy, *Neoliberal Constitutionalism: Lochnerism for a New Economy* (entire article)
- Aziz Rana, *American Social Democracy and its Imperialist Roots* (entire [post](#))
- Kate Andrias, *A Law and Political Economy Agenda for Labor and the Constitution* (entire [post](#))

Optional:

- [LPE 101 video](#) on constitutional law, featuring Jedidiah Purdy, with commentary by Amy Kapczynski and Ganesh Sitaraman

Week 4 (Sept. 20): Antitrust & tech

Readings:

- K. Sabeel Rahman, *Curbing the New Corporate Power* (entire [post](#))
- Lina M. Khan, *The End of Antitrust History Revisited* (entire article)
- Sanjukta Paul, *Antitrust as Allocator of Coordination Rights* (entire article)
- LPE Blog, *Eight Reactions to the FTC's Proposed Ban on Non-competes* (entire [post](#))

Optional:

- [LPE 101 video](#) on the law of the platform economy, featuring Sanjukta Paul, with commentary by Amy Kapczynski

Week 5 (Sept. 27): Labor & employment

Readings:

- Brishen Rogers, *Data and Democracy at Work: Advanced Information Technologies, Labor Law, and the New Working Class* (Excerpt 1, entire Introduction; Excerpt 2, all of chapter 2)
- Veena Dubal, *Essentially Dispossessed* (entire article)
- Jonathan F. Harris, *Can Consumer Law Protect Workers?* (entire [post](#))
- Diana Reddy, *Labor Bargaining and the “Common Good”* (entire [post](#))

Week 6 (Oct 4): Wealth & finance

Readings:

- Allison Tait, *Family Money: Economies of Excess and Extraction* (Excerpt 1, entire Introduction; Excerpt 2, all of ch. 8)
- Katharina Pistor, *The Code of Capital: How Law Creates Wealth & Inequality* (Excerpt 1, all of ch. 1; Excerpt 2, all of chapter 7)

Optional:

- Mehrsa Baradaran [video](#) on *The Color of Money: Black Banks and the Racial Wealth Gap*
- [LPE 101 video](#) on the law of money & banking, featuring Lev Menand, with commentary by Amy Kapczynski and Ganesh Sitarman

Short in-class presentations of paper ideas.

Week 7 (Oct. 11): Family law & the care economy

Readings:

- Anne L. Alstott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State* (entire article)
- Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition* (entire article)
- Martha McCluskey, *Countering Neoliberal Logic with the Vulnerable Human Subject* (entire [post](#))
- LPE “Care as Labor” [video](#)

Short discussions with me about outline progress and goals.

Week 8 (Oct. 18): Property, contract, & race

Readings:

- Cheryl I. Harris, *Whiteness as Property* (pp. 1707-1745)
- Marissa Jackson Sow, *Whiteness as Contract* (pp. 1803-1830)
- K-Sue Park, *Money, Mortgages, and the Conquest of America* (pp. 1007-15)
- Michelle Wilde Anderson, *Property Law as Poverty Law* (entire [post](#))

Paper outlines due.

Week 9 (Oct. 25): Criminal law & the carceral state

Readings:

- Jocelyn Simonson, *Police Reform Through a Power Lens* (pp. 781-830)
- Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (Excerpt, all of Introduction)
- Noah Zatz, *Labor Governance in the Shadow of Racialized Mass Incarceration* (entire [post](#))
- Evan D. Bernick, *Policing as Unequal Protection* (entire [post](#))
- Amna Akbar & Jocelyn Simonson, *Rethinking Criminal Law* (entire [post](#))

Week 10 (Nov. 1): Rebuilding power & alternative futures

Readings:

- Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality* (pp. 548-86)
- Allegra M. McLeod, *Envisioning Abolition Democracy* (pp. 1613-37)
- Amna A. Akbar, *Demands for a Democratic Political Economy* (entire article)
- Amy Kapczynski, *What's Beyond "Beyond Neoliberalism"?* (entire [post](#))

Weeks 11, 12, & 13 (Nov. 8, 15 & 29): Paper presentations

Reminder: Drafts will be due a week before the presentation date to give the presenter's classmates ample time for review. A student commentator will introduce each paper, and the author will then respond. The class will then constructively discuss the paper for the remaining allotted time.